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10/734,775	12/12/2003	William Stuart Gatley JR.	66745-43522	1876

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EXAMINER

BERTHEAUD, PETER JOHN

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/734,775
Filing Date: December 12, 2003
Appellant(s): GATLEY ET AL.

MAILED
NOV 27 2007
GROUP 3700

Joseph M. Rolnicki
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/3/2007 appealing from the Office
action mailed 4/13/2007

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Morgan 6,474,981.

Morgan discloses a furnace blower (32) that is attachable to a separate heater, the heater blower housing (32) comprising: a fan compartment (42) in the heater blower housing; a fan (38) in the fan compartment; a motor (36) operatively connected to the fan for rotation of the fan in the fan compartment by the motor; an exhaust compartment (see Fig. 3, specifically the radial spacing 104 and the area above surface 74 but below fan 38) in the heater blower housing, the exhaust compartment having an exhaust

compartment opening that receives exhaust gases from a separate heater when the heater blower housing is attached to the separate heater, the exhaust compartment communicating with the fan compartment and being positioned to receive exhaust gases from a separate heater and to direct the exhaust gases to the fan compartment (see Fig. 3), and at least a portion of the exhaust compartment having a layered wall with at least an interior layer, or what could be considered a heat shield (section of tube 42 that extends from 92 to end wall 58), inside the exhaust compartment and an exterior layer (34, 58) defining an exterior surface (48 and top surface of 58) of the blower housing, the interior layer (or heat shield) and the exterior layer being separate layers of the layered wall. Morgan also discloses the interior wall being positioned on an opposite side of the exhaust compartment from the exhaust compartment opening (see Fig 3) where exhaust gases received from a separate heater are directed toward and contact the interior layer (see col. 2, lines 1-4), and a fan compartment opening (see section of 42 directly below fan 38) in the heater blower housing communicating the fan compartment with the exhaust compartment (see Fig. 3, specifically the radial spacing 104 and the area above surface 74 but below fan 38); and, the interior wall extending from adjacent the exhaust compartment opening to adjacent the fan compartment opening to direct exhaust gases from the exhaust compartment opening to the fan compartment opening (see Fig. 3). Morgan discloses that the interior layer of the layered wall being spaced from the exterior layer of the layered wall with a hollow void (54) between the interior layer of the layered wall and the exterior layer of the layered wall. Morgan discloses the interior layer (section of tube 42 that extends from 92 to end

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wall 58) of the layered wall having a curved length as the layered wall extends from adjacent the exhaust compartment opening to adjacent the fan compartment opening, wherein the curved length of the interior layer has a concave cross section (see Fig. 3). Morgan further discloses an exhaust compartment communicating with the fan compartment and having at least a portion of a wall (34, 58) positioned to receive exhaust gases from a separate heater to which the heater blower housing is attached to direct the exhaust gases to the fan compartment; and, a heat shield (section of tube 42 that extends from 92 to end wall 58) attached to the portion of the wall inside the exhaust compartment. Morgan also discloses the heat shield being positioned between the portion of the wall (34, 58) of the exhaust compartment and the exhaust compartment opening (56).

In reference to the rejected claims, particularly claims 1 and 8, while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function, because apparatus claims cover what a device is, not what a device does (*Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990)). Thus, if a prior art structure is capable of performing the intended use as recited in the preamble, or elsewhere in a claim, then it meets the claim.

(10) Response to Argument

In response to Applicant's arguments with respect to claims 1 and 8

In reference to claims 1 and 8, the Applicant argues that the Morgan reference discloses a "fundamentally different blower" that supplies ambient air to a combustion chamber of a furnace; whereas the claimed invention draws hot exhaust gases out of heater and delivers the exhaust gases to an exhaust flue. Examiner maintains that the Applicant has merely argued the functionality of the present invention. Although not structurally identical, the Morgan reference reads on the invention as claimed. Applicant goes on to argue that "the Morgan blower is not designed to be attachable to a separate heater and does not have an exhaust compartment opening that receives exhaust gases when the blower is attached to a heater." Applicant is correct; however, to claim the invention in this way gives the limitations little patentable weight. Claims 1 and 8 begin, "A heater blower housing that is *attachable*" and claim 1 was further amended to state "an exhaust compartment opening that receives exhaust gases from a separate heater *when* the heater blower housing is attached to the separate heater". These phrases do not further structurally limit the claim and simply describe an intended use for the heater blower housing. Meaning, one could take the blower of Morgan and attach it to a heater, *when* the Morgan blower is attached it would indeed receive exhaust gases from that heater and could deliver them to an exhaust flue. This intended use is repeatedly stated throughout the claims, never narrowing the structural limitations. Therefore, it is held that the application does not distinguish over the prior art in terms of structure, as claimed.

In reference to Applicant's argument that the Examiner misinterpreted Morgan to be disclosing a fan compartment and an interior layer of a wall because they were designated as the same element in the reference: it is reasonable to interpret one part or piece of an invention as two or more separate elements, especially if the part serves more than one purpose. In addition, a compartment is simply an area with some type of boundary; therefore, it is clearly the case that a fan compartment is present due to the fact that 42 surrounds the fan, thus creating a fan compartment. Therefore it is held that the application does not distinguish over the prior art.

In response to Applicant's arguments with respect to claim 2, 9, and 10

In reference to claims 2 and 10, the Applicant argues "the section of the tube 42 of the Morgan reference that is interpreted as the claimed interior layer is not positioned on opposite side of an exhaust compartment from an exhaust compartment opening." Examiner respectfully disagrees. The exhaust compartment opening in Morgan is 56 (notice the arrow pointing into the exhaust compartment) and the interior layer of the wall (section of tube 42 just to the right of the motor in Fig. 3) can be seen at the opposite end of the apparatus. In reference to claim 9, in this set of claims the heat shield takes the place of the interior layer of the wall from claim 1. Thus, the heat shield, or interior wall, is indeed "positioned between the portion of the exhaust compartment that is *positioned to receive hot exhaust gases* (intended use)." Therefore, the Morgan reference reads on the claims.

In response to Applicant's arguments with respect to claims 5, 6, 7, 13, 14, and 15

In reference to claims 5, 6, 7, 13, 14, and 15, the Applicant argues that the reference fails to anticipate claim 5 because it does not show "a fan compartment opening in the heater blower housing communicating the fan compartment with the exhaust compartment, and the interior layer of the exhaust compartment layered wall extending from adjacent the exhaust compartment opening to adjacent the fan compartment opening". In the Final Rejection, Examiner clearly pointed out that the exhaust compartment could be seen in Figure 3, "specifically the radial spacing 104 and the area above surface 74 but below fan 38." This would indicate that the fan compartment opening would be located on the tube 42, i.e. the interior layer of the exhaust compartment layered wall, just below the fan where the exhaust compartment was ending. Thus, the fan compartment opening (located on 42 just below the fan in the direction of the motor) in the heater blower housing communicates the fan compartment with the exhaust compartment, and the interior layer (see 42) of the exhaust compartment layered wall extends from adjacent the exhaust compartment opening to adjacent the fan compartment opening. In reference to claims 6, 7, 14, and 15, the Examiner merely pointed out Figure 3 because it is clearly shown that the curved length of the interior wall (42) has a concave cross-section. Therefore, the Morgan reference reads on the claims.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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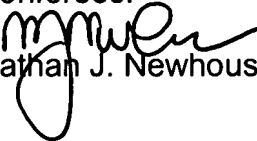
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Devon Kramer



Conferees:


Nathan J. Newhouse

NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER